SAWARN SINGH MEHAR SINGH A

v.

RHB INSURANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR B
MARY LIM J
[CIVIL SUIT NO: 22NCC-706-05-2012]
21 MAY 2013

INSURANCE: *Insurance clause - Construction of - Whether subject to same rules of construction as any other written contract - Circumstances of deceased's death - Whether covered under insurance policy - Whether bodily injury sustained by accidental, violent, external and visible means caused death of deceased - Whether bodily injury sustained was direct cause of deceased's death* C D

The plaintiff purchased an insurance policy ('the policy') for his late mother ('the deceased') whereby the benefits under the policy were (i) payment of RM250,000 in the event of accidental death; and (ii) payment of RM5,000 for funeral expenses. On 10 May 2006, the deceased passed away and the plaintiff, as the deceased's nominee, made a claim with the defendant. Upon investigations, the defendant declined the plaintiff's claim. The defendant alleged that the death of the deceased was not insured and was excluded under the policy since the circumstances of her death was not covered by the said policy. The post mortem recorded that the "deceased suffered from a massive heart attack which resulted in left ventricular failure" and that "no external injuries were noted". Further, the medical history of the deceased as recorded in the post mortem report showed that she was a heart patient. It was the plaintiff's contention that the deceased had a fall or had slipped in the bathroom and that slip or fall caused a heart attack from which she then died. The issue that arose for determination was whether the cause of the deceased's death entitled the defendant to decline this claim under the terms and conditions of the said policy. E F G H

Held (dismissing plaintiff's claim):

(1) In interpreting and construing the terms of the said policy to determine the intention of the parties, the court must always look at the whole policy. The present insurance policy was a I

A contract of insurance. It was subjected to the same general rules of interpretation as any other written document. The words used must *prima facie* be construed in their plain, ordinary, popular meaning rather than their strictly precise, etymological, philosophical or scientific meaning. Only if there
B is a clause in the policy which is open to two constructions will the court construe it *contra proferentum* (*Malaysia National Insurance Sdn Bhd v. Abdul Aziz Mohamed Daud*; refd). (para 20)

C **(2)** Under the terms of the policy, the benefits become payable in the event of death or injury. A proper and reasonable reading of the words, "arising from accidental, violent, external and visible means" qualify both the event of death as well as the event of injury. Both must be occasioned by means which are
D "accidental, violent, external and visible". (paras 28 & 29)

(3) The policy requires that the deceased sustain "bodily injury caused solely and directly by violent, accidental, external and visible means and being the sole and direct cause of the insured person's death". It was therefore apparent that what
E needs to be determined was the cause of death and the means that caused that death. In that respect, the language in the said policy required the cause of death to be bodily injury sustained by accidental, violent, external and visible
F means. (para 36)

(4) Given that it was not impossible for the deceased to have slipped in a place such as the bathroom, it would be reasonable to say that a slip or fall, if there was one, must have been a means which was "accidental, violent, external
G and visible". Otherwise, she would not have died. Unfortunately, this was not tested. The plaintiff did not testify thus leaving the police report that he made unreliable and inconclusive evidence. (para 38)

H **(5)** The deceased's bodily injury so sustained must be the sole and direct cause of her death. In other words, it must be the *causa causans* or *causa proxima* and not merely cause *sine qua non*. (para 41)

I

(6) The clause in the special exclusions in the policy provides that the policy did not cover death or disablement directly or indirectly caused by any pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind. This existing condition co-operated with the slip or fall resulted in the deceased's death in which case the slip was not the sole or independent cause of the death. In the circumstances, the plaintiff's claim had not been proved on a balance of probabilities. (paras 42, 46 & 47)

Case(s) referred to:
Amanah Raya Bhd v. Jerneh Insurance Bhd [2005] 2 CLJ 393 CA ***(refd)***
Jason v. Batten (1930) Ltd; Jason v. British Traders' Insurance Co [1969] 1 Lloyd's Rep 281 ***(refd)***
Malaysia National Insurance Sdn Bhd v. Abdul Aziz Mohamed Daud [1978] 1 LNS 117 FC ***(refd)***
New India Assurance Co Ltd v. Yeo Beng Chow [1971] 1 LNS 91 PC ***(refd)***
Re Scarr General Accident Assurance Corporation, Limited [1905] 1 KB 387 ***(refd)***

Other source(s) referred to:
ER Hardy Ivamy, *General Principles of Insurance Law*, 4th edn, Butterworths, 1979, p 3

For the plaintiff - In person
For the defendant - Ian Pereira; M/s Lawrence Pereira & Partners

Reported by Thirunavakarasu Vijayan

JUDGMENT

Mary Lim J:

[1] The plaintiff acts in person. It was not always the case. When the suit was first filed, he was represented. He has since discharged his counsel. After he was given some time, he reverted to inform the court that he was not able to find any counsel who was agreeable to taking on his brief. And, so he decided to pursue it on his own.

[2] This is his claim. On 8 February 2006, the plaintiff purchased two separate insurance policies for his aged parents from the defendant. It is the one that he purchased for his late mother that is of concern here.

[3] In the statement of claim, the plaintiff pleaded that the insurance policy was a Plan No. 5 "Golden Care" policy providing important protection for the aged and for which he paid an annual premium of RM260. The benefits under the policy were:

(i) payment of RM250,000 in the event of accidental death; and

(ii) payment of RM5,000 for funeral expenses.

[4] The period of cover here was from 8 February 2006 to 7 February 2007. This shall be referred as "the said policy". On 10 May 2006, the plaintiff's mother, Madam Sant Kaur Mehar Singh passed away. The plaintiff, as his late mother's nominee made a claim with the defendant. After investigations, the defendant declined the claim in its letter dated 7 June 2006. The plaintiff claimed that the defendant acted in breach of the terms of the said policy and filed this claim seeking the two benefits mentioned earlier.

[5] In its defence, the defendant averred that the death of the late Madam Sant Kaur's was not insured; or was excluded under the said policy. The defendant relied on the post mortem report for this purpose. The defendant alluded to the plaintiff's referral of the matter to the Financial Mediation Bureau set up by Bank Negara. On 26 July 2006, the Financial Mediation Bureau informed the plaintiff that the policy would not be paid out. According to its letter, the Financial Mediation Bureau had also relied on the post mortem report as the basis for its decision.

The Trial

[6] The plaintiff himself did not testify. He called Encik M Azhar Shawal (PW1), the person who sold him the policy to testify. Although PW1 had in fact sold two such policies to the plaintiff, he could not remember the details as it was "lama sangat; hampir tujuh tahun". PW1 testified that he explained the benefits that would be payable; and that it was per the terms of the said policy. According to him, the said policy was more in the nature of a personal accident policy though the term or description did not appear anywhere in the brochure or the said policy. He was unable to afford any evidence on how or when the said policy would be paid out as that was beyond his scope or function, which was just to introduce or sell policies like the one in question.

[7] PW1 was not cross-examined.

[8] The defendant called two witnesses. The first was Chen Chee Hoong (DW1), the defendant's Assistant General Manager of underwriting. He testified that the general terms of the said policy could be found in the pamphlet while the full terms and conditions were in the actual policy itself. According to him, the said policy was a "basic personal accident insurance policy ... only meant to cover injury or death arising from accidental, violent, external and visible means. This policy does not cover death as a result of old age or sickness". He further told the court that the said policy did not "cover death or disablement directly or indirectly caused by ... any pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind."

[9] Relying on the contents of two documents submitted by the plaintiff, namely the post mortem report and the death certificate, the defendant contended that the plaintiff's claim was not payable because "the circumstances of the death of the insured is not covered by this policy". The post mortem recorded that the "deceased suffered from a massive heart attack which resulted in left ventricular failure" and that "no external injuries were noted". Further, the medical history of the insured deceased as recorded in the post mortem report showed that the deceased insured was "a heart patient".

[10] Dr Karamjeet Singh a/l Sarjeet Singh (DW2) was the doctor who performed the post mortem on the deceased insured and prepared the report found at p. 15 of the documents marked as "Bundle A". He recorded the cause of death as "acute myocardial infarct with left ventricular failure". While he recorded that he "found no external injuries on the deceased", this was his internal examination:

> In the internal examination I examined the heart which weighed 550 gms and having a hyperemic left ventricle. There was a huge cardiomegaly with a grossly enlarged heart. The right and left coronaries both were occluded at its origin 95 to 100% (left coronary artery). Thrombus was found in the left coronary osticum. Cut section showed multiple fresh infarcts in the left ventricle. On examining the lungs, the right and left lungs showed multiple adhesions to the lateral walls of the chest. Both the lungs were grossly edematous.

[11] DW2 further recorded in the post mortem report that the deceased insured was:

> ... a known case of hypertension and bronchial asthma. She also was an old case of the left frontotemporal parietal encephalomalacia/status epilepticus. Vp shunt was in place 21 years ago. On 6/1/85 she developed left posterior frontal, temporal intracerebral haematoma with compression of the left ventricle and shift of the midline structures to the right. The left carotid artery and distal middle cerebral branches. The internal carotid artery in addition showed degenerative changes. On 16/1/85 *via* a burr hole craniotomy was done and the intracerebral haematoma was evacuated.

[12] He testified that he was able to conclude that the deceased insured died "as a result of a massive heart attack which resulted in left ventricular failure" because:

> The normal heart weighs in an average female 250 - 280 gms but on pg 17 of the bundle, the weight here is 550 gms indicating cardiomegaly which can be due to many causes. Here the autopsy rules that the lady had a massive heart attack due to occlusion of both right and left coronary arteries at their origin with thrombus also seen at the coronary ostia within the aorta. Multiple fresh infarct in the left ventricle indicate that death was probably instantaneous and could have resulted in a loss of consciousness.

Findings Of The Court

[13] Before considering the issue(s) identified, it must be recorded that the parties have prepared written submissions. The plaintiff, though not legally qualified prepared fairly comprehensive written submissions. In those submissions, he has however, alluded to matters or facts and evidence from his own knowledge and involvement of the events. Much of his submissions also comprised his own research on the internet and from search engines such as Wikipedia. Since the plaintiff did not testify and the product of his research which he now seeks to rely on was not offered for scrutiny under trial examination, and not given under oath, those parts of his submissions will be treated with caution. As advised repeatedly during the course of proceedings that the court will assist the plaintiff in particular on matters of procedure, there is nevertheless a limit to such assistance without compromising the rules of fair play and natural justice. At the time

of submissions, the plaintiff informed the court that he had sought and had been given friendly legal advice and tips on the proper conduct of his trial; but those persons however were also not prepared to conduct the brief on his behalf.

[14] As for issues, there were two initially raised by the parties, one of which related to the plaintiff's right to sue. The defendant took issue with the fact that the plaintiff had not produced his nominee form or letter of administration confirming that he is the administrator of the deceased's estate. This issue has since been abandoned.

[15] The single issue now for disposal is whether the cause of the deceased's death entitled the defendant to decline this claim under the terms and conditions of the Golden Care Plan Insurance Policy. This is a matter of construction of the terms of the said policy based on the evidence presented.

[16] As usual, the proper place to start must be the underlying documents of contract between the parties. Policies or contracts of insurance are no different. They are but a species of contracts. The terms and conditions of insurance contracts are frequently regarded or thought of as "standard". However, in reality, what those terms and conditions may be is entirely a matter of agreement between the parties. For the seller or provider of the insurance cover, there would be a variety or range of policies to suit different needs or demands. For the buyer of the policy cover, it would be a matter of the requirement or need for the cover in the first place; the length or period of cover; and sometimes, a matter of finance or cost of the policy.

[17] Different names or descriptions are given to the array of policies of insurances available in the market. These policies are frequently marketed or advertised through pamphlets or brochures introducing the potential buyer to the product of insurance being sold. These pamphlets or brochures contain the proposal and declaration forms which, if accepted by the insurance companies, are generally incorporated into the contract of insurance forming thus a part of that contract of insurance.

[18] Quoting from ER Hardy Ivamy in "*General Principles of Insurance Law*" (p. 3, 4th edn., Butterworths, 1979), the plaintiff has well-described what a contract of insurance is:

> A contract of insurance in the widest sense of the term may be defined as a contract whereby one person, called the "Insurer", undertakes, in return for the agreed consideration, called the "Premium", to pay to another person, called the "Assured", a sum of money, or its equivalent, on the happening of a specified event.
>
> The specified event must have some element of uncertainty about it; the uncertainty may be either (a) as in the case of life insurance, in the fact that, although the event is bound to happen in the ordinary course of nature, the time of the happening is uncertain; or (b) in the fact that the happening of any event depends upon accidental causes, and the event, therefore, may never happen at all. In the latter case, the event is called an accident.
>
> The specified event must further be of a character more or less adverse to the interest of the assured, or in other words, the accident must be calculated, if it happens, to result in loss to the assured.

[19] Once the terms and conditions are acceptable to both parties, it goes without saying that not unlike ordinary contracts, the terms and conditions in the contract of insurance will be binding on all parties. This was highlighted by the Privy Council in *New India Assurance Co Ltd v. Yeo Beng Chow* [1971] 1 LNS 91; [1972] 1 MLJ 231 where Viscount Dilhorne said that "... if conditions inserted by insurance companies are accepted by the insured, they are binding upon him."

[20] In interpreting and construing the terms of the said policy in order to determine the intention of the parties, the court must always look to the whole policy. The present insurance policy is a contract of insurance. It is subjected to the same "general rules of interpretation as any other written document". The words used must "*prima facie* to be construed "in their plain, ordinary, popular meaning, rather than their strictly precise, etymological, philosophical, or scientific meaning" ... Only if there is a clause in the policy which is open to two constructions, the court will construe it *contra proferentum*" - per Raja Azlan Shah FJ (as His Highness then was) in *Malaysia National Insurance Sdn Bhd v. Abdul Aziz Mohamed Daud* [1978] 1 LNS 117; [1979] 2 MLJ 29, 31.

[21] In this respect, the Court of Appeal's decision in *Amanah Raya Bhd v. Jerneh Insurance Bhd* [2005] 2 CLJ 393 is also insightful. It reminded that the interpretation of contracts of insurance is the same as with any other contracts for insurance contracts are as mentioned earlier, contracts. Quoting Fisher J in *Jason v. Batten (1930) Ltd*; *Jason v. British Traders' Insurance Company Ltd* [1969] 1 Lloyd's Rep 281 who said at p. 290 the following:

> A policy of insurance is subject to the same rules of construction as any other written contract. The words used in it must be given their plain, ordinary meaning in the context of the policy looked at as a whole, subject to any special definitions contained in the policy. In the case of ambiguity the *contra proferentum* rule will apply but apart from this there is no rule of law which requires me to strain any language of the policy in favour of or against the insured person.

[22] The numerous case law show that at the end of the day, the decisions turned on the language of the particular policy. It can only be on all fours if the language is the same. What, however, may be extracted would be the principles applied that may aid this court in interpreting this particular policy.

[23] In this case, this is what the pamphlet or brochure states:

> Golden Care Plan
>
> Essential protection during your golden years
> Specially designed for those between the ages of 50 and 75 years
>
> Special Benefits
>
> Accidental Death/Permanent Disablement
> The benefits of this policy will become payable in the event of death or injury arising from accidental, violent, external and visible means.

[24] These are the material parts of the said policy:

> Whereas the Insured described in the Schedule hereto has made RHB Insurance hereinafter called the "Company" a Proposal and Declaration which shall be the basis of this Contract and which is deemed to be incorporated herein and has paid or agreed to pay the Premium stated in the Schedule hereto as consideration for the

A Insurance hereinafter contained.

Now This Policy Witnesseth that if at any time during the Period of Insurance stated in the Schedule hereto or during any further Period for which the Company may accept payment for the renewal of this Policy the Insured Person shall sustain any Bodily
B Injury caused solely and directly by violent accidental external and visible means and being the sole and direct cause of the Insured Person's death or disablement as hereinafter defined. THEN the Company will pay to the Insured or in the event of death of the Insured to the Insured's legal personal representatives, or such
C beneficiary or beneficiaries as may be stipulated in the Schedule of this Policy, the sum or sums of money set forth in the Schedule.

[25] In Section I of the said policy, there is provision for "Special Exclusions to Section I"; and it reads:

D This Policy does not cover death or disablement directly or indirectly caused by:

1. Self-inflicted injury, suicide (whether felonious or not), provoked assault, intoxication, drugs and in the event of any
E claim hereunder the Insured shall prove that the claim arose independently of and was in no way connected with or occasioned to by or traceable to any of the said occurrences or any consequences thereof ...

2. The Insured Person engaged in motor cycling of all kinds
F (except riding as a pillion) ...

3. The Insured Person flying or travelling in an aircraft otherwise than as fare paying passenger with a licensed carrier on a scheduled domestic or international route ...

G 4. Any pre-existing physical defect or infirmity, Fits of any kind, Disease or Sickness of any kind.

5. Pregnancy or Childbirth.

6. Human Immune Deficiency Virus (HIV) and/or any HIV
H related illness including ...

[26] When interpreting and construing the said policy, the plaintiff invited the court to invoke the *contra preferentum* rule in his favour for the following reasons. First, because the terms of the brochure
I or proposal differed from the terms of the insurance policy that was finally sold to him. Second, because PW1 was not able to explain the benefits of the said policy; or answer the plaintiff's questions.

[27] Although the brochure has warned that it is "... not a contract of insurance. The precise terms and conditions are stated in the policy jacket", the plaintiff may have some cause for concern if there are material discrepancies in the two documents of the brochure and the said policy which is in fact the "policy jacket". Having examined both documents very carefully, I do not find any disparity, material or otherwise between these two documents. Both documents provide the cover of insurance for persons from the ages of 50 to 75 years in the event of death or injury arising from accidental, violent, external and visible means. Obviously, the cover would be subject to terms and conditions the extent of which can be found in the said policy or policy jacket.

[28] The plaintiff also contended that the rule should be invoked because there was ambiguity in the terms used. Under the terms of the said policy, the benefits become payable "in the event of death **or** injury" (emphasis added). It is his contention that because of the deployment of the article "or", the word "death" must be "read in singular identity and not in the alternative identity (or)". In other words, the event of death is not qualified by the ensuing words "arising from accidental, violent, external and visible means". Those words only serve to qualify the event of "injury". In short, the defendant contracted to pay in the event of death, period.

[29] With respect, I disagree. A proper and reasonable reading of the words, "arising from accidental, violent, external and visible means" qualify both the event of death as well as the event of injury. Both must be occasioned by means which are "accidental, violent, external and visible".

[30] As for PW1, I do not find his inability to answer the plaintiff's own questions troubling given that it has been some while since the policy was sold to the plaintiff; that the matters raised are more appropriately asked of DW1; and that the policy is no longer available. I understand it has been withdrawn for business and fiscal reasons; the defendant not finding it a viable or feasible product to maintain as the group of persons covered was in fact relatively, small - see DW1's evidence. What I do find troubling is that PW1 is the plaintiff's own witness and who he now seeks to discredit; which I find no reason to. He has given his evidence quite impartially and honestly; and the court accepts his testimony; especially in respect of the said policy being a personal accident policy.

[31] The plaintiff has suggested that the deliberate exclusion of the term "personal accident" was done in bad faith, intended to deceive and/or mislead persons and inducing them into contract. Again, with respect, this argument and suggestion must be rejected. Quite aside from there being no such plea in the statement of claim, the plaintiff has not proved this allegation at all.

[32] Moving on to the crux of the case, and that is the cause of death. The answer to this question is critical as it determines whether the defendant's decision of declining the claim amounted to a breach of the terms and conditions of the said policy as alleged by the plaintiff.

[33] It is the plaintiff's contention that his late mother had a fall or had slipped in the bathroom; and that slip or fall caused a heart attack from which she then died. A police report made by the plaintiff on the same day of death at 2110 hours (p. 11 bundle A) states:

> Pada pukul 1230 10/5/06 tengahari ibu saya nama Sant Kaur kad pengenalan … telah meninggal dunia pulang kepada Maha Kuasa. Pada pagi hari ini 10/05/2006 ibu telah ke tandas dan tergelincir.

[34] In further support of his claim, the plaintiff relies on the answer of DW2 to a question posed by him as to whether a fall can precipitate a massive infarct. DW2's answer was "probably can". The plaintiff submitted that the massive heart attack suffered by his late mother "was indirectly caused by the accident in the bathroom thereby entitling the family of the above named to make a valid claim on the said policy".

[35] The defendant disputes that the deceased fell or slipped in the bathroom. It relies on the post mortem report that records that the deceased was found "collapsed" in the bathroom. In this respect, the defendant relied on the findings of DW2 which recorded that there were no external or internal injuries indicating that the deceased had fallen or slipped.

[36] The said policy requires that the deceased to sustain "bodily injury caused solely and directly by violent accidental external and visible means and being the sole and direct cause of the insured person's death". It is therefore apparent that what needs to be

determined is the cause of death; and the means that caused that death. In that respect, the language in the said policy requires the cause of death to be bodily injury sustained by accidental violent external and visible means.

[37] Let me start with the term "bodily injury". Given that this term is nowhere defined the said policy, it is reasonable to say that the term can connote an injury to any part of the body, including the heart. That injury need not be visible or severe. What it needs to be is an injury that causes death or permanent disablement. In this case, the heart "died". I find support for this view in the case of *Re Scarr General Accident Assurance Corporation, Limited* [1905] 1 KB 387. In that case, the deceased's heart was in a weak and unhealthy condition. As a result of physical exertion, he died of heart failure. The claim against the insurance company was dismissed because the injury which resulted in the death of the assured was not caused by accidental means. This is what Bray J said at p. 393:

> The injury to the heart, which I assume to be bodily injury, seems to me to have been caused by the violent exertion, and the violent exertion was intended and not accidental. There was no slip or fall or blow. He intended to push and pull, and he pushed and pulled.

[38] Now, given that it is not impossible for Madam Sant Kaur to have slipped in a place such as the bathroom, it would be reasonable to say that a slip or fall, if there was one must have been a means which was "accidental violent external and visible". Otherwise, she would not have died. Unfortunately, this was not tested. The plaintiff did not testify, leaving the police report that he made unreliable and inconclusive evidence.

[39] In contrast, we have the evidence of DW2 who, both in his report, and in court testified that the deceased was found "collapsed" in the bathroom; and that there were no injuries associated with a fall or slip, found on the deceased. This deceased's "history" was told to him by a member of the family, as is generally the case. While he had agreed with the plaintiff that a fall 'probably can' trigger a heart attack, DW1 testified that he "found no external injuries; probably a fall would not have triggered a heart attack". Hence, there was no evidence of a fall as claimed by the plaintiff.

[40] For that reason alone, I must agree with the defendant that the means which caused the death of the deceased has not been established; let alone a means which is "violent accidental external and visible".

[41] In any case, that is not all there is to the cover. Not only must the means responsible for Madam Sant's death be due to bodily injury sustained by accidental violent external and visible means, but the bodily injury so sustained must be the sole and direct cause of her death. In other words, it must be the *causa causans* or *causa proxima* and not merely *causa sine qua non*.

[42] In this regard, for the sake of completeness, and this is assuming for a moment that the cover is available in the first place under the general provision of cover; one must examine Section I of the said policy, the provision for "Special Exclusions to Section I", specifically exclusion 4. That clause provides that the policy does not cover death or disablement directly or indirectly caused by "Any pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind."

[43] The question here is whether Madam Sant Kaur had any "pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind"? If the answer is in the negative, then that would be the end of the matter. The slip in the bathroom (on the assumption that that is proved, which it is not here) which would be reasonable to regard as the "accidental violent external and visible means" by which her bodily injury was sustained must be the sole and direct cause of her death.

[44] However, if the answer is in the affirmative, the ensuing question is whether that "pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind" directly or indirectly caused her demise. In other words, is it a proximate cause of her death? If the answer to this question is in the affirmative, then the cover is not available in which case the defendant would not be in breach of the terms and conditions of the said policy when it declined the plaintiff's claim. If the answer is in the negative, leaving then the fall to be the cause of death, then the defendant would be in breach of the said policy in rejecting the claim.

[45] DW2 gave an account of the deceased's medical history. According to his evidence, the deceased was " ... a known case of hypertension and bronchial asthma". It was his evidence that "the hypertension ... is a precursor to heart disease". From his examination of the deceased's heart, he found that it was grossly enlarged (huge cardiomegaly) with blockages or occlusions in the right and left coronaries. These occlusions at the origins were extensive, "95 to 9-100%". While he had agreed with the plaintiff that a fall 'probably can' trigger a heart attack, he testified that he "found no external injuries probably a fall would not have triggered a heart attack".

[46] It can be safely gathered from the evidence of DW2 that the deceased indeed had "pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind." Unfortunately, this "pre-existing physical defect or infirmity, fits of any kind, disease or sickness of any kind" indirectly caused Madam Sant Kaur's death. This existing condition "co-operated" with the slip/fall resulting in the death of Madam Sant Kaur in which case the slip is not the sole or independent cause of the death.

[47] In the circumstances, the plaintiff's claim has not been proved on a balance of probabilities. Accordingly, it must be dismissed. However, having regard to the peculiar facts and circumstances here, I am not inclined to award any costs against the plaintiff. Each party is therefore to bear its own costs.